

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Kevin Lee,	:
Petitioner,	:
	:
v.	: File No. 2:09 CV 94
	:
Andrew Pallito, Commissioner,	:
Vermont Department of Corrections,	:
Respondent.	:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed April 12, 2010. Petitioner's objection were filed on June 4, 2010.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

After careful review of the file, the Magistrate Judge's Report and Recommendation and the objections, this Court ADOPTS the Magistrate Judge's recommendations in full.

The respondent's motion to dismiss (Doc. 20) is **GRANTED** and Lee's motion to dismiss (Doc. 17) is **DENIED**. Accordingly, Lee's petition for writ of habeas corpus (Doc. 4), filed pursuant to 28 U.S.C. § 2254 is **DENIED**.

Pursuant to Fed. R. App. P. 22(b), a certificate of appealability is **DENIED** because the petitioner has failed to make a substantial showing of denial of a federal right. Furthermore, the petitioner's grounds for relief do not present issues which are debatable among jurists of reasons, which could have been resolved differently, or which deserve further proceedings. See e.g., Flieger v. Delo, 16 F.3rd 878, 882-83 (8th Cir.) cert. denied, 513 U.S. 946 (1994); Sawyer v. Collins, 986 F.2d 1493, 1497 (5th cir.), cert. denied, 508 U.S. 933 (1993).

Furthermore, it is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

THIS CASE IS DISMISSED.

Dated at Burlington, in the District of Vermont, this 4th day of June, 2010.

/s/ William K. Sessions III  
William K. Sessions III  
Chief Judge  
U.S. District Court